

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FREDRIC G. RUBENSTEIN,

Plaintiff,

-against-

TRANSPORT WORKERS' UNION OF
GREATER NEW YORK, LOCAL 100,
and ROGER TOUSSAINT,

Defendants.
-----X

GEORGE B. DANIELS, District Judge:

ORDER
02 CV 994 (GBD)

Plaintiff commenced this action, *inter alia*, for violations of Title VII of the Civil Rights Act of 1964. Defendant Roger Toussaint filed a counterclaim against plaintiff for defamation. Plaintiff moved, pursuant to Fed.R.Civ.P. 56, for partial summary judgment dismissing the counterclaim.¹ The matter was referred to Magistrate Judge Kevin N. Fox for a Report and Recommendation ("Report"). Magistrate Judge Fox found that the statements at issue were expressions of opinion, and hence were not actionable. Additionally, he found that defendant Toussaint is a public figure, and accordingly the defamation counterclaim was untenable because there was no evidence that plaintiff made the statements with actual malice as required. Magistrate Judge Fox, therefore, recommended that plaintiff's motion for partial summary judgment be granted.

In the Report, the parties were advised that the failure to timely file objections to the Report will result in a waiver of any objections and will preclude appellate review. None of the

¹ Plaintiff moved to dismiss the counterclaims for defamation and invasion of privacy. Defendant Toussaint indicates that "[t]o the extent that the counterclaim can be read to assert a separate claim for invasion of privacy, in addition to or as an alternative to the defamation claim, that part of the counterclaim is hereby withdrawn." (Defs.' Opp'g Mem. at 1 n.1).

parties have filed objections, and the time in which to do so has expired.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1). Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd sub nom. Heisler v. Rockland County, 164 F.3d 618 (2d Cir. 1998). After reviewing the Report, the Court finds that the record is not facially erroneous.

Accordingly, the Report and Recommendation is hereby adopted in its entirety, and for the reasons stated therein, the plaintiff's motion for partial summary judgment is granted.

Dated: New York, New York
September 21, 2005

SO ORDERED:



GEORGE B. DANIELS
United States District Judge